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January 29, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: Notice of *Ex Parte* Presentation, GN Docket No. 00-185, CS Docket No. 02-52

Dear Madame Secretary:

On January 28, 2003, representatives of the Alliance of Local Organizations Against Preemption ("ALOAP") met with the staff of the Office of General Counsel in the above captioned proceeding. Attending the meeting on behalf of ALOAP were: Nicholas Miller, Joe Van Eaton & Holly Saurer of Miller & Van Eaton. Libby Beaty of the National Association of Telecommunications Officers and Advisors, and Juan Otero of the National League of Cities. Attending the meeting on behalf of the FCC Office of General Counsel were: Linda Kinney, Debra A. Weiner, Chris Killion, Susan Aaron, and Harry Wingo.

As summarized in the attached talking points, the parties discussed: the Commission's *Title* I and ancillary authority, the non-Title VI sources of local franchising authority to require franchise fees for use of the public rights-of-way to provide cable modem service; the authority of local franchising authorities to require cable modem service providers to comply with local customer service standards; local authority to broadly enforce state consumer protection laws; and the contractual issues created by the above-captioned proceeding.

In addition, the parties discussed: general state property law doctrine as it relates to use of the public rights-of-way; authority of local governments under federal law, state law and home rule doctrines to require compensation and franchises for use of the public rights-of-way by non-cable, non-telecommunications service providers; and the significant and additional burden placed on the public rights-of-way by the provision of cable modem service.

Sincerely,

MILLER & VAN EATON, P.L.L.C.

By

Holly L. Saurer

cc w/o attachments: Linda Kinney
Debra A. Weiner
Chris Killion
Susan Aaron
Harry Wingo

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington. D.C. 20554

In the Matter of	)	
Inquiry Concerning High-speed Access to the lnternct Over Cable and Other Facilities	)	GN Docket No. 00-185
Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities	)	CS Docket No. 02-52

EX PARTE PRESENTATION ON BEHALF OF THE ALLIANCE OF LOCAL ORGANIZATIONS AGAINST PREEMPTION

January 28,2002

Alliance of Local Organizations Against Preemption Members

ALOAP is supported by the Alliance for Community Media ("ACM"), the American Public Works Association ("APWA"), the Greater Metropolitan Telecommunications Consortium ("GMTC") and the Texas Coalition of Cities For Utility Issues ("TCCFUI"). The ACM represents public, educational and government access organizations and users. Many of its members (like members of the organizations which comprise ALOAP) are working within local communities to ensure that all community members are able to take advantage of broadband's promise. APWA's members include the engineers and other professionals responsible for designing, building, repairing and monitoring municipal streets and other public infrastructure. The GMTC is a consortium of 28 greater metropolitan Denver, Colorado communities formed to facilitate regulation of telecommunications issues on behalf of their jurisdictions. TCCFUI is a coalition of approximately 110 cities in Texas that have joined together to, among other things, advocate their interests in municipal franchising, municipal right-of-way management and compensation, municipal public utility infrastructure, and other related issues before the Commission, the Texas PUC, the Texas legislature and other fora.

ALOAP is also being supported by individual communities and local government organizations including Alexandria, VA, Austin, TX, Buffalo Grove, IL, Chandler, AZ, Charlotte & Mecklenberg Co., NC, Chicago, IL, Chula Vista, CA, Concord, CA, Denver, CO, Dubuque, IA, Evanston, IL, Fairfax County, VA, Forest Park, Greenhills, and Springfield Township, OH, Fort Wayne, IN, Fort Worth, TX, the Illinois Association of Telecommunications Officers and Advisors, Indianapolis, IN, Irvine, CA, Kansas City, MO, Lake County, IL, Los Angeles, CA, the Metropolitan Area Communications Commission ("MACC"), representing Washington County, and the Oregon cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard, and Tualatin, OR, Minneapolis, MN, Minnesota Association of Community Telecommunications Administrators, Miami Valley Cable Authority (OH), Montgomery County, MD, Mt. Hood Cable Commission (OR), Nashville, TN, Newport News, VA, Newton, MA, Niles, IL, Northbrook, IL, Northern Suburban Cable Commission, MN, Olympia, WA, Piedmont Triad Council of Governments representing Alamance County, Caswell County, Davidson County, Guilford County, Montgomery County, Randolph County, Rockingham County and the municipalities of Archdale, Asheboro, Burlington, Eden, Elon, Gibsonville, Haw River, High Point, Jamestown, Lexington, Liberty, Madison, Mayodan, Mebane, Oak Ridge, Ramseur, Randleman, Reidsville, Yanceyville, NC, Phoenix, AZ, Plano, TX, Rockville, MD, San Antonio, TX, The States of California and Nevada Association of Telecommunications Officers and Advisors, Springfield, MO, St. Louis Park, MN, St. Paul, MN, St. Tammany Parish, LA, Tacoma, WA, Takoma Park, MD, the Texas Association of Telecommunications Officers and Advisors, Tucson, AZ, Village of Hoffman Estates, IL, Village of Oak Park, IL, Village of Skokie, IL, Vancouver, WA, Virginia Beach, VA., the Washington Association of Telecommunications Officers and Advisors, and West Allis, WI.

The Cornmission Does Not Have Authority to Regulate Cable Modern Service Under Title I Alone.

- Relying on Title 1 alone denies high speed service universal service support. Providers will challenge the Commission's authority to impose universal service and other non-Title 1 obligations.
- Title I authority is ancillary to Title II, Title III, and Title VI authority.
  - Title 1 of the Communications Act "is not an independent source of regulatory authority." *California v. FCC,* 905 F.2d 1217, 1240 at n. 35 (9th Cir. 1990), *citing United States v. Southwestern Cable Co.*,392 U.S. 157, 178 (1968).
  - *See also FCC v. Midwest Video Corp.*, 440 U.S. 689, 706 (1979) ("without reference to the provisions of the Act directly governing broadcasting, the Commission's .jurisdiction under § 2(a) would be unbounded.").
  - *Southwestern Bell Tel. Co. v. FCC,* 19F.3d 1475, 1484 (D.C.Cir. 1994) ("[T]he Commission's expansive power under the Act does not include the 'untrammeled freedom to regulate activities over which the statute fails to confer, or explicitly denies. Commission authority,"' *quoting National Ass'n of Regulatory Util. Comm'rs v. FCC,* 533 F.2d 601,617 (D.C.Cir. 1976)).
  - *GTE Service Corp. v. FCC,* 474 F.2d 724 (2d Cir. 1973) (Section 4(i) does not authorize the Commission to regulate data processing services provided by regulated entities. The court found that the Commission could regulate the offering of data processing services by common carriers because of the Commission's authority over the carriers, hut also held that the Commission has no jurisdiction over data processing itself.)
  - *Turner v. FCC,* 514 F.2d 1354, 1355 (D.C. Cir. 1975) ("[T]he Commission must find its authority in its enabling statutes"); *Louisiana Pub. Serv. Comm 'nv. FCC,* 476 U.S. 355 (1986) (striking down Commission rules governing the depreciation of telephone plant that conflicted with state regulations) ("To permit an agency to expand its power in the face of a congressional limitation on its jurisdiction would be to grant to the agency power to override Congress.") *Id.* at 374-75.
- Title I does not give the Cornmission authority to resolve the state property law challenges in state courts. Non-utility service providers need to obtain the permission of the public and private property owners to use the respective property.

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EXCERPT FROM THE COMMENTS OF THE ALLIANCE OF LOCAL ORGANIZATJONS AGAINST PREEMPTION REGARDING TITLE I AUTHORITY

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II. THE COMMISSJON HAS NO REASON AND NO AUTHORITY TO PREEMPT LOCAL REGULATION OF CABLE MODEM SERVICE.

B. Localities May Franchise and Regulate Cable Modem Service Providers.

3. *Title I Does Not Grant the Commission Broad Preemptive Authority Over Local Regulation of Non-Cable, Non-Telecommunications Services.*

The only other possible source for the sort of general preemptive authority to which the Commission appears lo he adverting in the NPRM is Title 1 of the Communications Act. The NPRM cites Sections 1, 2(a), and 4(i) of Title 1 as providing the Commission with the authority to preempt local regulation of cable modem service. *See* NPRM at ¶ 75. Title I does not provide a gencralized source for Commission preemptive authority here, for at least two reasons.

First, the qucstion at the heart of the NPRM is whether local governments may issue franchises and charge rents for use of public property. The authority under Title I, such as it is, applies to "communication by wire and radio" and to persons engaged in such "communication or such transmission." 47 U.S.C. § 152(a). To note the obvious, the right to grant a franchise with respect to public rights-of-way is not a communication by wire. Nor is a locality, by virtue of providing public property for the use of utilities, engaged in "communication" or "transmission" of information. Title 1 simply cannot he read to give the Commission plenary jurisdiction over property simply because it *might* be useful (or even essential) to a particular communications provider. If Title I did give the Commission such plenary authority, the pole attachment provisions of the Communications Act, 47 U.S.C. § 224, would have been wholly unnecessary.[1] What is particularly notable about Section 224 is that it includes within its reach

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[1] The Pole Attachment Act added Section 224 to the Communications Act in response lo a determination by the Commission that it had no authority to regulate the terms under which power companies and other private right-of-way owners made their facilities available to cable operators. "[T]he Federal Communications Commission has recently decided it has no jurisdiction under the Communications Act of 1934, as amended, *to* regulate pole attachments and conduit rental arrangements between CATV systems and nontelephone or telephone utilities." S. Rep. No. 95-580, at *14* (1977), *repi-inledin* 1978

"rights-of-ways" controlled by investor-owned utilities. and expressly prohibits the Commission from regulating the rates charged by municipal utilities for their property. It would be odd indeed to read Title I to give the Commission the authority to command niunicipalities generally to grant access to rights-of-way at a price dictated by the Commission where that right does not exist with respect to municipally-owned utilities.[2]

Second. and more generally, Title I of the Communications Act "is not an independent source of regulatory authority." *California v. FCC*, 905 F.2d 1217, 1240 at n. 35 (9th Cir. 1990), *citing United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1 968). *See also FCC v. Midwest Video Corp.*, 440 U.S. 689, 706 (1979) ("without reference to the provisions of the Act directly governing broadcasting, the Commission's jurisdiction under § 2(a) would be unbounded."). *Southwestern Bell Tel. Co. v. FCC*, 19 F.3d 1475, 1484 (D.C. Cir. 1994) ("[T]he Commission's expansive power under the Act does not include the 'untrammeled freedom to regulate activities over which the statute fails to confer, or explicitly denies, Commission authority,'" *quoting National Ass'n of Regulatory Util. Comm'rs v FCC*, 533 F.2d 601, 617 (D.C.Cir. 1976)); *Turner v. FCC*, 514 F.2d 1354, 1355 (D.C. Cir. 1975) ("[T]he Commission must find its authority in its enabling statutes"); *Louisiana Pub. Sew. Comm'n v. FCC*, 476 U.S.

U.S.C.C.A.N. 109. 122. Congress did not intend the Commission's power to extend beyond what was explicitly included. As noted in House Committee Report 98-4103 on HR 4103, which contains identical language as to what became 152(a), "[T]he Committee does not intend subsection (a)(1) to give the FCC jurisdiction over oilier services over which the FCC does not otherwise have jurisdiction, solely because these other services are provided over the same facilities that are also used to provide cable service." H.R. Rep. No. 98-4103 at 95, *reprinted in* 1984 U.S.C.A.A.N. (98 Stat. 2779) at 4732). The Senate Report on the original pole attachment legislation noted that [i]t is only because such state or local regulations currently does *not* exist that federal supplemental regulation is justified. S. Rep. No. 95-580, at 16-17 (1977), *reprinted in* 1978 U.S.C.C.A.N. 109, 109-25.

[2] The most recent example of the Commission's limited authority in this area is the decision of the 11th Circuit in Southern Co. v. FCC, ___ F.3d___, 2002 WL 1299142 (11th Cir. 2002). In that case the court noted that the Section 224's refrence to "poles, ducts. conduits or rights-of-way" does not include electric transmission towers. The courts then do not need tlie Commission's authority expressly when the

355 (1986) (striking down Commission rules governing the depreciation of telephone plant that conflicted with state regulations) ("To permit an agency to expand its power in the face of a congressional limitation on its jurisdiction would be to grant to the agency power to override Congress.") *Id.* at 374-7s.

Whatever authority the Commission has under Title I is very limited in scope, and cannot be exercised in a way that contradicts the intent of Congress as expressed in the structure of the rest of the Communications Act. Accordingly, in addressing the treatment of cable modem service, the Commission must respect the overall statutory scheme, including the role allocated to local governments. To the extent that Congress has delineated a local role in relation to cable operators, cable systems, and the services they provide -- which it clearly has in Title VI – the Commission can do nothing that contravenes or ignores that role.

Section 4(i) is not to the contrary. Section 4(i), 47 U.S.C. § 154(i), serves only to give the Commission authority in areas necessary to implement the *express* authority given by other sections of the Act. Section 4(i) confers no authority to regulate activities that are not otherwise within the Commission's jurisdictional ambit. *North American Telecomms. Assn. v. FCC*, 772 F.2d 1282, 1292 (7th Cir. 1985) ("Section 4(i) is not infinitely elastic").

The Supreme Court has held that, under Title I, the Commission may exercise authority that is "reasonably ancillary to the effective performance of the Commission's various responsibilities." *Southwestern Cable Co.* at 178 (1968). The term "ancillary jurisdiction" ultimately derives from this portion of the Court's opinion, but the phrase is actually a misnomer;

Commission engages in regulating the activities of facilities outside the Commission's field, be they electric utilities or local governments.

it should be more accurately referred to as "ancillary authority." The Commission's *jurisdiction* is limited by Section 2 of the Communications Act. The Commission has *authority* to engage in the specific activities set forth in the remainder of the Act; where its authority is not express, it may rely on its ancillary jurisdiction. Note, for example, that the Commission's authority over cable television in *Southwestern Cable* derived from its jurisdiction over broadcasting. As in that case, the Commission's authority over cable modem service must derive from one of the substantive provisions in the Act: presumably either Title II or Title VI.'

The purpose of ancillary jurisdiction is to ensure that the Commission can fill in gaps in its authority over entities and activities it is empowered to regulate, *see, e.g., Lincoln Tel. and Tel. Co. v. FCC*, 659 F.2d 1092 (D.C. Cir. 1981) (finding ancillary jurisdiction to impose upon telecommunications carriers interim billing method for interconnection charges); *New England Tel. and Tel. Co., et al. v. FCC,* 826 F.2d 1101 (D.C. Cir. 1987) (finding ancillary jurisdiction to order telecommunications carriers to reduce telephone rates), not to expand that authority to include otherwise unregulated entities or activities. Cases relied upon by the Commission[4] involve an exercise of ancillary authority as necessary to establish a coherent scheme of common carrier regulation under Title II. The Commission's exercise of its ancillary ,jurisdiction was circumscribed: as one Court put it, it was up to the Commission to show that "state regulation

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In *GTE Service Corp. v. FCC,* 474 F.2d 724 (2d Cir. 1973), the court found that Section 4(i) did not authorize the Commission to regulate data processing services provided by regulated entities. The court found that the Commission could regulate the offering of data processing services by common carriers because of the Coinmission's authority over the carriers, hut also held that the Commission has no jurisdiction over data processing itself. Data processing involves the transmission of signals over wires, often using the same wires used to transmit communications; if the Commission had the authority to regulate all "instrumentalities" that might be engaged in the transmission of communications, then it would seem that the Commission could have used that authority to regulate the data processing industry; **hut** it did not have that authority. Similarly, in this case, the Commission's ancillary jui-isdiction does not allow it to broadly preempt local regulation of cable modem service, in a manner unrelated to its authority under Title II or Title VI.

would negate valid regulatory goals." *State of California* v. *FCC*, 39 F.3d 919, 931 (9th Cir. 1994).

Here, the Commission's Declaratory Ruling by its terms limits the permissible scope of the Commission's authority over interstate information services. Title II, and authority ancillary to Title II, are irrelevant under the Declaratory Ruling, because the Commission has decided that the provision of cable modem service does not involve any service subject or even possibly subject to Title 11 regulation.

Turning to Title VI, the Cable Act itself prescribes the proper balance between the Commission and local governments. and the Commission cannot use "ancillary authority" to upset that balance. To the extent that the Commission is relying on Title I read in conjunction with its authority under Title VI, the short answer is: Title I cannot logically provide broad authority to preempt local government regulation of non-cable communications services that Congress preserved in Title VI. To the extent that the Commission is not relying on ancillary authority, but is instead claiming an independent right under Title I to regulate all facilities, equipment and persons that have any relationship to communication, the answer is that there is no such authority. Those limits are particularly strong with respect to the franchising and compensation issues raised in the NPRM because resolution of those issues implicates fundamental constitutional issues.

Nor are there other provisions at issue which even arguably permit preemption of local rights with respect to non-cable communications services. Section 706, 47 U.S.C. § 157 nt., orders the Commission to "take immediate action to accelerate deployment of such capability by removing barriers lo infrastructure investment and by promoting competition in the

[4] *State of California at* 931-33 (9th Cir. 1994); *Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198, 214-218 (D.C. Cir. 1982) *cert. denied,* 461 U.S. 938 (1983)

telecommunications market" only in the instance where it inquires "whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion," and finds that this goal is not being met. The Commission has yet to make a determination that advanced communications is not being deployed in a reasonable and timely fashion. On the contrary, it has found the opposite. ***See*** Third Report at ¶ 1 (rel. February 6, 2002) and discussion in Part II.A, *supra*.

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In sum, there are no provisions of the Act which give the Commission broad preemptive authority over local governments with respect to the regulation of non-cable communication services, or with respect to the use and occupancy of their public rights-of-way to provide non-cable communications services: [5]

[5] The NPRM is thus significantly and procedurally defective. The Commission has asked parties to identify generally what local regulations should be preempted. The Commission has literally invited an *unlimited* fishing expedition, without first considering the limits of its authority, the limitations created by the **Act,** and certainly without providing any notice as to what it might. or might not be considering preempting. It also does so without the slightest evidence that there is a problem that needs to be addressed, and indeed (as shown above) with affirmative evidence in its own reports that there is no problem. For the Commission to preempt local authority in the face of these defects would thus be arbitrary and capricious. *Home Box Office Inc. v. FCC*, *567* F.2d *9* (D.C. Cir. *1977).*

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August *6,* 2002

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II. CONTRARY TO INDUSTRY CLAIMS, THE COMMISSION DOES NOT HAVE BROAD AUTHORITY TO PREEMPT LOCAL GOVERNMENT FRANCHISING OR REGULATION OF CABLE MODEM SERVICE, NOR DOES THE COMMISSION HAVE BROAD AUTHOKITY TO PREEMPT RENTS FOR USE OF PUBLIC PROPERTY.

B. Other Provisions Cited by the Industry Actually Preserve Local Authority.

4. *Reliance on Tide I Cannot Justify* ***Preemption.***

As discussed in our opening comments at 32-37, and also noted by NCTA in Section I of its comments, the Commission's authority under Title I is limited. Title I was not enacted to "centralize interstate authority" over information services.' This argument is entirely belied by the history, substance, and structure of the Communications Act. The Act originated as the means of regulating the technologies that existed at the time it was passed: communications by wire (telephone and telegraph) and radio communications. Title II addressed the former and Title III the latter. Title I does not confer broad powers, because Congress adopted a specific, detailed regulatory scheme for each technology in the respective title.

Section 1. 47 U.S.C. § 151, describes the purpose of the Act; it is not a plenary grant of power. Otherwise, most of the rest of the Act would be unnecessary. Similarly, Section 2, 47 U.S.C. § 152, describes the matter and persons over which the Commission has jurisdiction – but again it does not grant plenary power or even specific power to do anything. What the Commission can and cannot do is laid out elsewhere in the Act, primarily in Titles II, III, and VI. When Congress enacted Title VI, it amended Section 2 to refer to cable service and cable operations. Yet Congress has never adopted a separate title to deal with infomation services, nor has it amended Section 2 to refer to information services and information service providers.

Logic would dictate either that Congress believed that information services and their providers fall within an existing category – such as cable service – or that it did not intend for the Commission to comprehensively regulate such services.

Of course, Congress has been aware for many years that the Commission might seek to regulate information services, at least since the time of *Computer I*.[2] Yet even in the 1996 Act, Congress did nothing to alter the existing structure. Presumably Congress is satisfied with the status quo and intends for the Commission to regulate information services only within the bounds established as a result of *Computer II*.[3] The mere fact that Congress has defined "information services'' is not sufficient to support the claim that the Commission now has exclusive jurisdiction. If Congress had intended to grant exclusive jurisdiction, it could and would have said so. But Section 2, which contains the Commission's grant ofjurisdiction, does not even refer to information services

In any case. the definition of "information services" in Section 3(20) **was** necessary to give meaning to those provisions - nearly all of them newly adopted in 1996 – that addressed information services. Not one of those provisions gives the Commission authority over information services **in** general. They only direct the Commission how to exercise its pre-existing authority over entities that already regulate with respect to aspects of the regulated

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[1] Comments of Cox Communications at 39.

[2] *In the Matter of Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services und Facilities,* Tentative Decision of the Commission, 28 FCC 2d 291 (1970) ("Computer I").

[3] Under *GTE Service Corp. v. FCC*, 474 F.3d 724 (2d Cir. 1973), the Commission has no authority to regulate infomiation services that are not provided by entities not otherwise subject to the Commission's jurisdiction. The Commission has never directly challenged that holding, and its decision to "forebear" in *Computer II* is not inconsistent with the Second Circuit's decision. In any case, the current regime says nothing about exclusive jurisdiction or about preemption of local authority over cable modem service.

businesses which touch on or involve infomation services. These sections include 228 (Regulations of carriers offering pay-per-call services); 230 (Protection for private blocking and screening of offensive material); 251 (Interconnections); 254 (Universal service); 256 (Coordination for interconnectivity); 257 (Market entry barriers proceeding); 259 (Jnfrastructure sharing); 272 (Separate affiliates; Safeguards); 274 (Electronic publishing by Bell operating copies); 309 (Application for license); 534 (Carriage of local commercial television signals); and 544 (Regulation of services, facilities and equipment). When one examines these provisions carefully. Not one provision in this list grants the Commission extensive authority over information services. The provisions illustrate both the ancillary nature of infomation services in the overall scheme of the Communications **Act,** and the ancillary nature of the Commission's authority. They are not grants of exclusive authority.

The industry might have a point if Congress had said that the Commission has a role in regulating information services outside of the exercise of its existing authority over cable and telecommunications providers – but Congress did not. The 1996 Congress did not alter the basic jurisdictional roles assigned federal, state and local governments in any way that is relevant here.[4] Furthennore, because Congress did not intend for the Commission to exercise jurisdiction over infomiation services outside of the existing three-part regulatory structure (Title II, Title III **and** Title VJ), there was no need to alter that structure.

So the question becomes whether Title I grants the Commission the power to preempt local authority over any service – not just an information service, but any service - because there is no basis for saying that infomation services have special status in, by, or with respect to Title I. The courts have answered this question. The Commission only has ancillary jurisdiction

under Title I, and that authority is severely limited, as we discussed in our opening comments. *See* ALOAP Comments at 32-37.

In summary, the entire Act is an attempt to balance the different federal, state and local interests. Congress expressly preserved state and local authority in parts of the communications field, and the Commission can preempt this authority only where Congress has defined it explicitly.[5] By looking at the entire structure of the **Act** it Is clear that the Commission has limited authority. with powers explicitly laid out in each title. The Commission's powers over information services are therefore even more limited – there is certainly no grant to the Commission of plenary authority over information services in the Act. The Commission may not construe relative silence with respect to information services as granting broad authority when the Act establishes such a detailed and defined scheme with respect to other classes of service. There Is at most a limited grant for limited purposes, to the extent needed to address the specific issues identified by Congress in the provisions listed above. To reach beyond those explicit powers, the Commission must demonstrate that the use of its ancillary powers under Title I is warranted, and that authority is limited to that which is "reasonably ancillary to the effective performance of the Commission's various responsibilities."[6] Without a strong showing that local franchising impedes the Commission's responsibilities under an explicit provision of the Act outside of Title I, the Coinmission cannot exercise ancillary jurisdiction to preempt local authority

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[4] The obvious exception being the federal-state jurisdictional limits for purposes of Section 25 *AT&T v. Iowa Util. Bd.*, 119 S. Ct. 721 (1999).

[5] *Dallas v. FCC*, 165 F.3d at 347-48 (5th Cir. 1999).

[6] *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968).